

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT  
ISSUED BY THE CITY OF SUMNER  
TO THE CITY OF SUMNER  
ANIMAL SHELTER

THE OTHER SIDE OF THE TRACKS  
NEIGHBORHOOD STEERING COMMITTEE,

Appellant,

v.

THE CITY OF SUMNER,

Respondent.

SHB No. 84-9

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

This matter, the request for review of a shoreline substantial development permit issued by the City of Sumner to the City of Sumner Animal Shelter, came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk (presiding), Rodney M. Kerslake, Nancy R. Burnett and Richard A. O'Neal, convened at Lacey, Washington on August 9 and 10, 1984.

Appellant was represented by Attorney at Law Ross Radley. Respondent City of Sumner was represented by City Attorney Gordon A. Scraggin.

1 Respondent filed a motion to dismiss appellant's request for review upon  
2 the ground that the Board does not have jurisdiction, as there is no  
3 substantial development proposed within the shorelines area that is within two  
4 hundred feet of the ordinary high water mark of the Stuck River.

5 Appellant filed a motion to remand the substantial development permit to  
6 the City of Sumner because the property line was changed by the City Council  
7 to delete any of the site or substantial development from the shoreline of the  
8 Stuck River.

9 The Board heard arguments on these motions and denied the motion to remand  
10 and left respondent's motion concerning jurisdiction before the Board.

11 Thereafter the hearing on the merits proceeded.

12 Witnesses were sworn and testified. Exhibits were examined. From  
13 testimony heard and exhibits examined, the Shorelines Hearings Board makes  
14 these

#### 15 FINDINGS OF FACT

##### 16 I

17 The matter arises on a shoreline of the Stuck River within the City of  
18 Sumner.

##### 19 II

20 The site is a portion of a larger parcel of land owned by the City of  
21 Sumner which was annexed by the City of Sumner in 1962, but is not contiguous  
22 to the city limits. The city's sewage treatment plant is adjacent and to the  
23 west of the site in question.

1 III

2 The project consists of a 14' by 20' animal control shelter which is a  
3 totally enclosed, sound proof structure, designed to hold a maximum of six  
4 animals. It will be constructed of concrete block with no outside runs. The  
5 only windows will be non-opening, located high on the wall facing the Puyallup  
6 River.

7 IV

8 On October 26, 1983, the City filed an application for a shoreline  
9 substantial development permit to construct the animal shelter. The City also  
10 filed an environmental checklist on November 21, 1983. On November 23, 1983,  
11 the environmental checklist was reviewed by the City's environmental  
12 assessment committee and on January 3, 1984, a declaration of non-significance  
was issued.

14 V

15 The testimony and exhibits offered by the City shows that the City  
16 considered noise, land use, population, housing, transportation, circulation,  
17 public services and human health in its decision to issue a declaration of  
18 non-significance under SEPA.

19 VI

20 On January 5, 1984, the planning commission held a public hearing on the  
21 application for the shoreline substantial development permit. Notice of the  
22 public hearing was published and all persons desiring to speak were given the  
23 opportunity. In addition, the commission considered a letter from appellant  
24 in which exhibit R-8 indicates that he expressed his concerns with the  
25 project. On March 1, 1984, a second public hearing was held. Appellant

1 advised the planning commission, that although notice of the January 5, 1984  
2 meeting was properly published, notices were not posted in three places on the  
3 property concerned as required by Section 12.10.030 of the Sumner City code.  
4 In view of this oversight, the planning commission agreed to hold another  
5 public hearing on March 1, 1984. Notices of this meeting were properly  
6 published and posted on the property concerned, except that the notice did not  
7 include a statement advising that written comments concerning the applications  
8 or a request to receive a copy of the final order as required by RCW  
9 90.58.140(4)(b)(iii) could be submitted. At the public hearing on March 1,  
10 1984, all exhibits and testimony previously taken at the hearing on January 5,  
11 1984, were made a part of the record of the second public hearing, the  
12 planning commission approved the issuance of a shoreline substantial  
13 development permit.

#### 14 VII

15 Feeling aggrieved by the decision, the appellant filed a request for  
16 review to the Shorelines Hearings Board on April 5, 1984.

17 A pre-hearing conference was held on May 23, 1984. Thereafter a  
18 pre-hearing order was entered setting forth the issues and indicating that, in  
19 an effort to settle the matter, the City would explore the possibility of  
20 conducting a public hearing concerning selection of a site for the animal  
21 shelter. On July 2, 1984, the City council held a public hearing and reviewed  
22 all of the available sites. On July 9, 1984, the City council selected the  
23 Harrison Street site.

#### 24 VIII

25 The issues identified in the pre-hearing order were as follows:

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1 1. Did the City of Sumner comply with the Sumner Shoreline Master Program  
2 notice requirements? (Section 7.02.02)

3 2. Does the proposed project comply with the Sumner Shoreline Master  
4 Program Section 7.04.01?

5 3. Did the City of Sumner comply with the State Environmental Policy Act  
6 (SEPA) in issuing a declaration of non-significance? More specifically in  
7 regard to:

- 8 - noise
- 9 - land use
- 10 - population
- 11 - housing
- 12 - transportation/circulation
- 13 - public services
- 14 - human health

15 4. Was the appearance of fairness doctrine violated when the City staff  
16 determined that an Environmental Impact Statement was not required when they  
17 are, in essence, proposing the project?

#### 18 IX

19 Testimony showed that approximately eleven or more feet of the northwest  
20 corner of the site as described in the shoreline permit issued by the City of  
21 Sumner, is within the shorelines area, within 200 feet of the ordinary high  
22 water mark of the Stuck River. The construction of a portion of a chain link  
23 fence, extension of a six inch sanitary sewer line, extension of a  
24 three-quarter inch water line and the construction of the driveway approach,  
25 the latter two of which are within the existing right-of-way of Harrison  
26 Street, are within the shoreline area. There are no buildings proposed within  
27 200 feet of the ordinary high water mark of the Stuck River.

X

Geographically, the site where the proposed development is to be located is separated from a majority of the single-family residences in the area by SR 410 freeway. The site is reached by a single street, State Street.

XI

The testimony and exhibits of the City proved that the site is not within the one hundred year floodplain. State Street access to the facility does infrequently become flooded and impassable for short periods of time, normally 24 to 48 hours.

XII

The proposed development is in the urban environment under the City of Sumner Shoreline Master Program (SSMP).

XIII

The SSMP provides with regard to an urban environment:

The objective of the urban environment is to insure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for the multiplicity of urban areas.

The urban environment is an area of high intensity land use including residential, commercial and industrial development. The environment does not necessarily include all shorelines within an incorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressures, as well as areas planned to accommodate urban expansion. Shorelines for future urban expansion should present few biophysical limitations for urban activities and not have a high priority for designation as an alternative environment.

Section 12.10.030 of the Sumner City Code (Section 7.02.020 of SSMP) reads as follows:

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12.10.030 Publishing and Posting Notices. The applicant shall cause to be published notices once a week for two consecutive weeks in a newspaper of general circulation in the city. In addition, he shall post three copies of the notice on the property concerned. Each notice shall include a statement that any person desiring to present his views to the planning commission may do so in writing or notify the planning commission in person at a public hearing.

XV

Section 12.10.100 of the Sumner City Code (7.04.01 of SSMP) reads as follows:

12.10.100 Application Review--Criteria. The planning commission shall review an application for a permit based on the following:

1. The application;
2. the Environmental Impact Statement, if one is required;
3. written comments from interested persons;
4. information and comment from other city departments affected;
5. independent study of the planning commission;
6. evidence presented at a public hearing.

XVI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

I

Appellant, having requested review, bears the burden of proof in this proceeding. RCW 90.58.140(7).

II

Appellant urges that the annexation of the site by the City of Sumner may be inconsistent with RCW 35.13.180. This contention is not germane to any

1 issue in the pre-hearing order entered on May 29, 1984, in this matter and we  
2 do not address it for that reason.

### 3 III

4 The Board has jurisdiction to review the shoreline substantial development  
5 permit granted by the City of Sumner. RCW 90.58.180(1). In reviewing the  
6 permit, we will review only the proposed development permitted and not as  
7 modified by the applicant subsequent to issuance of the permit. Hayes v.  
8 Yount, 87 Wn.2d 280, 552 P2d 1038 (1976). In addition, the issue as to  
9 whether or not the proposed development is a substantial development as that  
10 term is defined in RCW 90.58.030(3)(e) was not identified as an issue in the  
11 pre-hearing order entered on May 24, 1984, in this matter. For the  
12 aforementioned reasons, the motion to dismiss this request for review on  
13 grounds that the proposal is not a shoreline substantial development is denied.

### 14 IV

15 The testimony and exhibits offered by the city established that the notice  
16 requirements were not fully complied with as required by RCW  
17 90.58.140(4)(b)(iii).

18 Notwithstanding, appellant did submit written comments and they were  
19 considered at the January 5, 1984 meeting of the planning commission.  
20 Appellant has not shown prejudice on the facts of this case. Such an omission  
21 in the notice could be fatal to permit action by local government if an  
22 appellant fails to submit written comments because of that omission. It is  
23 not so in this case.

### 24 V

25 The evidence established that the planning commission complied with the

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1 review criteria in the SSMP.

2 VI

3 The evidence established that the city complied with SEPA Chapter 43.21C  
4 RCW in issuing a declaration of non-significance.

5 VII

6 The Environmental Assessment Committee of the city is not required by  
7 ordinance or statute to hold a public hearing when reviewing an environmental  
8 check-list, nor was a hearing held prior to the declaration of  
9 non-significance.

10 The appearance of fairness doctrine has not been applied to administrative  
11 action except where a public hearing was required, see Polygon Corp. v. City  
12 of Seattle, 90 Wn.2d 59, 578 P2d 1309 (1978), and where such action is  
13 quasi-judicial in nature. See Evergreen School District v. Clark County  
14 Committee on District Organization, 27 Wn.App 820, 621 P2d 770 (1980) and RCW  
15 42.36.010.

16 The court in Polygon v. Seattle, supra, refused to extend the doctrine to  
17 the action of a building superintendent imposing conditions under SEPA on a  
18 building permit which conformed to existing zoning requirements.

19 VIII

20 In summary, the city met notice requirements, followed correct review  
21 criteria, complied with SEPA and did not violate the appearance of fairness  
22 doctrine. The substantial development permit should be affirmed. We express  
23 no opinion as to changes in the development proposed by the applicant  
24 subsequent to issuance of the permit in question.

25  
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Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

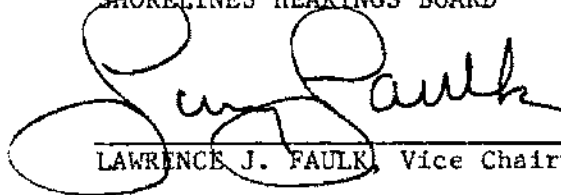
From these Conclusions the Board enters this


ORDER

The shoreline substantial development permit granted by the City of Sumner to itself for construction of an animal shelter is affirmed.

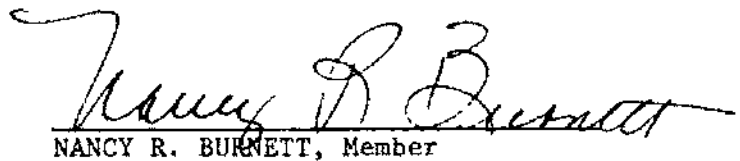
DATED this 19<sup>th</sup> day of September, 1984.

SHORELINES HEARINGS BOARD

 9/26/84  
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RODNEY M. KERSLAKE, Member

  
RICHARD A. O'NEAL, Member

  
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